

FCC Received July 8, 1996 @ 1:14 p.m.  
Donna A. Bradshaw

## FEDERAL COMMUNICATIONS COMMISSION

---

In Re Applications of: )  
RAINBOW BROADCASTING )  
COMPANY )  
For an Extension of Time to )  
Construct, )  
and )  
For an Assignment of its )  
Construction Permit for )  
Station WRBW(TV), )  
Orlando, Florida )

GC Docket No. 95-172

File No. BMPCT-910625KP

File No. BPMCT-910125KE

File No. BTCCT-911129KT

**RECEIVED**

**'JUL 11 1996**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

Volume: 7  
Pages: 707 through 941  
Place: Washington, D.C.  
Date: June 27, 1996

---

### HERITAGE REPORTING CORPORATION

*Official Reporters*  
1220 L Street, NW, Suite 600  
Washington, D.C.  
(202) 628-4888

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of:	)	
	)	GC Docket No. 95-172
RAINBOW BROADCASTING	)	
COMPANY	)	File No. BMPCT-910625KP
	)	File No. BPMCT-910125KE
For an Extension of Time to	)	File No. BTCCT-911129KT
Construct,	)	
	)	
and	)	
	)	
For an Assignment of its	)	
Construction Permit for	)	
Station WRBW(TV),	)	
Orlando, Florida	)	

Suite 201  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Thursday,  
June 27, 1996

The parties met, pursuant to the notice of the  
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN  
Administrative Law Judge

APPEARANCES:

On behalf of Federal Communication Commission:

DAVID SILBERMAN, ESQUIRE  
STEWART BLOCK, ESQ.  
Separate Trial Staff  
Federal Communication Commission  
1919 M Street, Northwest  
Washington, D.C. 20554  
(202) 418-1740

Heritage Reporting Corporation  
(202) 628-4888

## APPEARANCES: (Continued)

On Behalf of Rainbow Broadcasting Company:

BRUCE EISEN, ESQUIRE  
Kay, Scholer, Fierman, Hayes & Handler, LLP  
901 Fifteenth Street, Northwest  
Washington, D.C. 20005  
(202) 682-3500

On Behalf of Rainbow Broadcasting, Ltd.:

MARGOT POLIVY, ESQUIRE  
KATRINA RENOUF, ESQUIRE  
Renouf & Polivy  
1523 Sixteenth Street, Northwest  
Washington, D.C. 20036  
(202) 265-1807

On Behalf of Press Broadcasting Co., Inc.:

HARRY F. COLE, ESQUIRE  
ANN C. FARHAT, ESQUIRE  
Bechtel & Cole, Chartered  
1901 L Street, Northwest, Suite 250  
Washington, D.C. 20036  
(202) 833-4190

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Joseph Rey	710	759	--	--	795
	758	898			848
					920

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Rainbow:</u>			
8	723	724	--
6	(Prev.)	739	--
7	(Prev.)	737	--
<u>Press:</u>			
8	768	--	774
9	775	815	--
10	787	816	
11	809	--	814
12	810	--	814
13	820	894	--
14	832	844	--
15	834	(Withdrawn)	--
16	836	845	--
17	846	895	--
18	879	896	--

Hearing Began:	9:00 a.m.	Hearing Ended:	4:02 p.m.
Recess Began:	10:14 a.m.	Recess Ended:	10:24 a.m.
Recess Began:	11:46 a.m.	Recess Ended:	1:02 p.m.
Recess Began:	1:32 p.m.	Recess Ended:	1:38 p.m.
Recess Began:	2:45 p.m.	Recess Ended:	2:55 p.m.

P R O C E E D I N G S

1

2

JUDGE CHACHKIN: On the record.

3

4

Mr. Eisen, are you ready to proceed with your next witness?

5

MR. EISEN: Yes, Your Honor.

6

Mr. Joseph Rey.

7

JUDGE CHACHKIN: All right, Mr. Rey.

8

Whereupon,

9

JOSEPH REY

10

11

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

12

DIRECT EXAMINATION

13

BY MR. EISEN:

14

15

Q For the record, would you state your name and your present address?

16

A Joseph Rey. Orlando, Florida.

17

Q And, Mr. Rey, how are you presently employed?

18

19

A I am general manager of WRBW(TV) in Orlando. I am also president of Rainbow Broadcasting Co., Inc., the general partner of Rainbow Broadcasting, Limited.

20

21

22

Q Are you familiar with an entity know as Rainbow Broadcasting Company?

23

A Yes, I am.

24

25

Q Do you know whether or not Rainbow Broadcasting Company still exists?

1           A     I don't think it does.

2           Q     Do you know what form of business entity Rainbow  
3 Broadcasting Company was?

4           A     Rainbow Broadcasting Company was a general  
5 partnership.

6           Q     And can you please describe what the ownership of  
7 Rainbow Broadcasting Company was?

8           A     At the beginning it was myself, 85 percent  
9 interest; my mother, a 5 percent interest; and Leticia  
10 Jaramillo, 10 percent interest.

11          Q     Was there ever a change in that ownership  
12 interest?

13          A     Yes, there was.

14                I don't recall the exact date, five - six years  
15 ago my mother transferred her 5 percent interest to me.

16          Q     So can you tell us what the ownership of Rainbow  
17 Broadcasting Company was as of June 1990?

18          A     I think my mother had not transferred to me yet.  
19 If that's the case, then I was 85 percent --

20          Q     I'm sorry.

21                June of 1993.

22          A     June of 1993, I held 90 percent and Leticia  
23 Jaramillo held 10 percent interest.

24          Q     Was Rainbow Broadcasting Company ever an applicant  
25 before the FCC?

1 A Yes, it was.

2 Q And can you tell us what it was an applicant for?

3 A Rainbow Broadcasting Company applied for a  
4 construction permit on Channel 65 out of Orlando, Florida,  
5 in 1982.

6 Q Do you know whether or not the FCC ever issued a  
7 construction permit to Rainbow Broadcasting Company?

8 A Yes, it did.

9 Rainbow Broadcasting Company received the actual  
10 construction permit, the papers, in spring of 1986.  
11 Received the actual paper. I think the award was after the  
12 Review Board, 1984, I believe.

13 Q Did Rainbow Broadcasting Company continue to have  
14 a construction permit in the spring of 1986 through 1990?

15 A There was a period of time that Rainbow  
16 Broadcasting Company did not have a construction permit. I  
17 believe the sequence is the Commission affirmed the Review  
18 Board, losing applicants in the comparative proceeding,  
19 appealed it to the Court of Appeals here in Washington. It  
20 was briefed, but before oral argument the Commission asked  
21 for a remand. It was remanded, and then the permit, I  
22 think, was vacated is the terminology.

23 It was then reissued sometime later, I think like  
24 nine months or so that it was vacated. And then thereafter  
25 it's had a construction permit.

1 MR. COLE: Objection, Your Honor, to the use of  
2 the term "vacated," the characterization of the term  
3 "vacated."

4 The parties have stipulated at Joint Exhibit No.  
5 1, Stipulation No. 6, that between November '86 and February  
6 '88 RBC's construction permit was held in abeyance pending  
7 the outcome of the Commission's review of its minority  
8 ownership policies.

9 JUDGE CHACHKIN: Well, the stipulation will  
10 control.

11 MR. COLE: Thank you, Your Honor.

12 MR. EISEN: But understand, Your Honor, this is  
13 just this witness's understanding.

14 JUDGE CHACHKIN: I understand, but I just want to  
15 make sure for purposes of the record this stipulation --

16 MR. EISEN: Yes, of course it has control.

17 JUDGE CHACHKIN: Yes.

18 BY MR. EISEN:

19 Q Did there come a time when Rainbow Broadcasting  
20 Company filed a request for an extension of its construction  
21 permit?

22 A Yes.

23 In 1988, in the spring of 1988, the Commission  
24 canceled the permit for lack of construction. Rainbow  
25 Broadcasting Company informed the Commission that the



1 comparative hearing was still in litigation in the Court of  
2 Appeals, and the construction permit was reinstated, and  
3 even though we argued that the two years for construction  
4 should be held until final grant, we were told -- I believe  
5 the fellow's name was Gordon Oppenheimer or something to  
6 that effect -- that we should file extension every six  
7 months until litigation ended, and then we will get our two  
8 years.

9 Q Do you recall how many extension requests Rainbow  
10 Broadcasting Company had filed in all?

11 A From '88 to '90 Supreme Court, that should be  
12 four of them. And then there was a fifth and a sixth filed  
13 thereafter.

14 MR. EISEN: Your Honor, we have two Joint Hearing  
15 Exhibits, Joint Exhibits 3 and 4, and I would like to  
16 provide a copy of the joint exhibits to the witness.

17 JUDGE CHACHKIN: Go ahead.

18 BY MR. EISEN:

19 Q Would you please review for a moment Joint Hearing  
20 Exhibits 2 and 3, Mr. Rey?

21 And what I am going to ask you is what do those  
22 two exhibits comprise?

23 A Exhibit 2 is an application for extension of  
24 broadcast construction permit dated by my signature, January  
25 22, 1991; by the stamp in the top, January 25, 1991. And it

1 has an exhibit, three-page exhibit attached to it.

2 Q What about Exhibit 3, what is that?

3 A Again, an application for extension of broadcast  
4 construction permit by my signature dated June 22, 1991; by  
5 the stamp on the top, June 25, 1991. And it has an exhibit  
6 comprised of three pages.

7 Q To your knowledge, were those two exhibits filed  
8 with the FCC?

9 A Yes, they were as far as I'm concerned.

10 Q Do you know whether or not any person or any  
11 entity opposed the grant of those extension requests?

12 A Yes, I think both of them were informally opposed  
13 by Press Broadcasting Company.

14 Q And did there come a time when the FCC acted on  
15 the sixth extension request, Exhibit No. 3?

16 A Yes, some two years later, in -- I call it August  
17 1st of 1993. That date might not be totally accurate. It  
18 may be July 31 or August 2, but something August 1st of  
19 1993.

20 Q What was the action that the Commission took, if  
21 you recall?

22 A It reinstated the construction permit and gave it  
23 an eight or nine-month extension.

24 Q Had the Commission taken any action earlier with  
25 regard to the sixth extension request?

1 A Yes.

2 Q And when was that? Do you know?

3 A June of 1993, to the best of my recollection, the  
4 Commission canceled the construction permit.

5 Q Did it deny the application?

6 A Yes.

7 Q How did you learn that the application had in fact  
8 been denied?

9 A Through communication with RBC's counsel, Ms.  
10 Margot Polivy.

11 Q And can you recall when you had the communication  
12 with counsel?

13 A Not exactly when, but it was June of 1993.

14 Q And can you recall how the contact was made?  
15 Was it in person or by telephone?

16 A No, it was by telephone.

17 Q Can you describe the discussion that you and Ms.  
18 Polivy had at the time you learned that the application had  
19 been denied?

20 A Well, I was dumbfounded. Ms. Polivy was irate.  
21 She didn't believe that there was any reason for canceling  
22 the permit or denying the application.

23 Q Did she make any recommendation to you with regard  
24 to what RBC should do?

25 A We discussed filing for reconsideration. She told

1 me that that was the mechanism, the next mechanism to be  
2 used.

3 Q Would you please, in the Joint Hearing Exhibits,  
4 turn to Joint Hearing Exhibit No. 4?

5 A Yes.

6 Q Have you ever seen that document before?

7 A I don't believe so.

8 Q Did you have any information that that document  
9 existed at anytime prior to July 1, 1993?

10 A No.

11 Q Do you recall ever having a discussion with Margot  
12 Polivy about that document before July 1, 1993?

13 A No.

14 Q In the discussion with Ms. Polivy where you first  
15 learned about the denial of the extension request, did she  
16 tell you whether or not she intended to contact any person  
17 about the denial?

18 A No.

19 Q Did she at anytime in June or July of 1993 tell  
20 you that she had talked with Antionette Cook Bush about the  
21 RBC denial?

22 A No.

23 Q In June of 1993, were you familiar with Antoinette  
24 Cook Bush?

25 A Yes.

1 Q Can you describe your relationship with her?

2 A Friends.

3 Q In June of 1993, did you know how Ms. Bush was  
4 employed?

5 A I believe she worked in the U.S. Senate.

6 Q Can you tell me how you learned that fact?

7 A Probably from Toni herself.

8 Q Did you at anytime personally contact Ms. Bush  
9 about the extension denial?

10 A No.

11 Q To your knowledge, did Ms. Jaramillo ever contact  
12 Ms. Bush about the extension denial?

13 A No.

14 Q Did there ever come a time where you learned that  
15 Ms. Bush had contacted the FCC to inquire about the RBC  
16 extension denial?

17 A Yes.

18 Q When was that, if you recall?

19 A Press Broadcasting filed allegations of an  
20 improper meeting, and she was part of those allegations.  
21 That was some time in second half of '93.

22 Q How did you learn that fact?

23 A Most likely from counsel, Margot Polivy.

24 Q Did you see these pleadings before July 1, 1993?

25 A Which pleadings?

1           Q     The pleadings that you just mentioned from which  
2     you learned that Press had filed --

3           A     No, this was after.

4                     August - September of '93, something like that.  
5     October, possibly. It was after.

6           Q     After Ms. Polivy told you that the extension  
7     request had been denied, can you recall what happened next?

8           A     Well, in that conversation regarding the denial of  
9     the application, the permit, we spoke about the  
10    reconsideration. She was irate we didn't get our two years  
11    to construct. We had spent dollars towards construction.

12          Q     All right.

13          A     I think I got a call thereafter that conversation,  
14    and excuse me for rambling, but I am trying to put it all in  
15    perspective historically.

16                    I got a call and I was asked to attend a meeting  
17    in Washington. The call came one, two, three days prior to  
18    the meeting, a very short notice.

19          Q     Who made the call?

20          A     Ms. Margot Polivy.

21          Q     At that time did Ms. Polivy tell you how the  
22    meeting had been arranged?

23          A     I don't think. My recollection is that she got  
24    scheduled a meeting at the FCC. I don't know how it was  
25    arranged. I assumed that she called and made an

1 appointment.

2 Q Did she tell you that?

3 A I don't have specific recollection. I think so.

4 Q Do you recall whether she told you who she had  
5 contacted to set up the meeting?

6 A I don't have a specific recollection other than  
7 we're going to Mr. Roy Stewart's office for a meeting.

8 Q Did you in fact come to Washington to attend the  
9 meeting?

10 A Yes, I did.

11 Q And did you attend the meeting?

12 A Yes, I did.

13 Q Can you recall who was present at the meeting?

14 A Roy Stewart; Mr. Robert Ratcliffe; Margot Polivy;  
15 myself; Mr. Clay Pendarvis; Mr. Paul Gordon; and Ms. Barbara  
16 Kreisman.

17 Q Had you ever met any of those individuals before  
18 the meeting?

19 A No, I had not, other than Margot Polivy,  
20 obviously.

21 Q And to the best of your recollection, what was the  
22 date of the meeting?

23 A I have heard a date of July 1st. I will accept  
24 that date, 1993.

25 Q Had you personally ever contacted any of those

1 individuals other than Ms. Polivy before?

2 A No.

3 Q Can you recall what was discussed during the  
4 meeting?

5 A The meeting began by Ms. Polivy handing everyone  
6 in the room a two or three-page chronology of all of the  
7 RBC's applications from its inception. And then she went on  
8 to explain how Rainbow had not had its two years to  
9 construct; how Rainbow had expended, oh, I don't know, close  
10 to a million dollars to date; that sort of a thing.

11 Q Did you personally speak at all during the  
12 meeting?

13 A I believe towards the end of the meeting I asked  
14 Mr. Roy Stewart how come Rainbow had not received its two  
15 years to construct after final grant.

16 Q Did Mr. Stewart respond to your question?

17 A He -- there was a long pause, I recall, and he  
18 eventually said, "Well, you can address that in  
19 reconsideration."

20 Q Did anyone at the meeting mention the fact that  
21 Press Broadcasting Company had opposed Rainbow's  
22 applications?

23 A Yes, it was discussed in the chronology. It was  
24 mentioned several times.

25 Q Can you recall specifically what was said?



1           A     No, the informal objections were referenced. I  
2     don't have specific recollection of the argument.

3           Q     And were any recommendations made to Rainbow as a  
4     result of the meeting by the staff?

5           A     That Rainbow should file a petition for  
6     reconsideration, and address everything that Margot had  
7     mentioned in terms of two years to construction and dollars  
8     spent, et cetera.

9           MR. EISEN: Your Honor, if I may, I would like to  
10    mark for identification Rainbow Broadcasting Exhibit No. 8,  
11    and I would like to distribute two copies to the court  
12    reporter, one to the Separate Trial Staff.

13          MR. SILBERMAN: Thank you.

14          MR. EISEN: One to Mr. Cole.

15                And I would describe the document as a 22-page  
16    document entitled "Petition for Reconsideration in  
17    Reinstatement and Grant of Application for Assignment of  
18    Construction Permit." It includes a number of attachments.  
19    It is signed at page 12 by Margot Polivy of Renouf & Polivy  
20    as counsel for Rainbow Broadcasting Company. It also  
21    includes a statement of Joseph Rey, and other appendices as  
22    I had mentioned.

23                I would like to show the witness a copy of the  
24    document.

25          JUDGE CHACHKIN: The document described will be

1 marked for identification as Rainbow Exhibit 8.

2 (The document referred to was  
3 marked for identification as  
4 Rainbow Exhibit No. 8.)

5 BY MR. EISEN:

6 Q Mr. Rey, have you ever seen that document before?

7 A Yes.

8 Q Did you have anything to do with the preparation  
9 of that document?

10 A Yes.

11 Q Can you tell me what you did with regard to the  
12 document?

13 A After that meeting in Mr. Stewart's office on that  
14 day, I went back to the offices of Ms. Margot Polivy, and I  
15 worked on aspects of this petition; specifically, the  
16 dollars spent which is in here somewhere; yeah, and the time  
17 table to construct. Those two items come to mind  
18 specifically.

19 Q Do you know whether or not that document was filed  
20 with the FCC?

21 A When I left her office the document was done in  
22 substance. It had not been typed or word processed, if you  
23 will. I signed the statement before leaving. I believe the  
24 document was faxed to me the next day for review, and it was  
25 subsequently filed from my understanding.

1 Q Would you refer, please, to page 15 of that  
2 document, which is entitled "Appendix A"?

3 A Yes.

4 Q Do you know who prepared Appendix A?

5 A Margot Polivy, I believe.

6 Q Do you recall whether or not that document was in  
7 existence at the time of the July 1, 1993, meeting?

8 A This is the chronology that Ms. Margot Polivy  
9 handed everyone in the room on that meeting.

10 MR. EISEN: Your Honor, at this time I would move  
11 Rainbow Exhibit 8 into evidence.

12 JUDGE CHACHKIN: Any objection?

13 MR. COLE: No, Your Honor.

14 MR. SILBERMAN: None, Your Honor.

15 JUDGE CHACHKIN: Rainbow Exhibit 8 is received.

16 (The document referred to,  
17 having been previously marked  
18 for identification as Rainbow  
19 Exhibit No. 8, was received in  
20 evidence.)

21 MR. EISEN: Thank you.

22 MR. COLE: Well, Your Honor, I have no objection  
23 with the caveat that it is not being offered for the truth  
24 of the matters asserted in it. The offer is an aid to  
25 understanding cross-examination.

1 MR. EISEN: It's being offered primarily for the  
2 purpose of Appendix A, and the fact that it was distributed  
3 at the meeting on July 1, 1993.

4 JUDGE CHACHKIN: It is not being offered for the  
5 truth of the matters?

6 MR. EISEN: Not those things that are included in  
7 the legal argument in the document, no.

8 JUDGE CHACHKIN: All right. Rainbow Exhibit 8,  
9 for the limited purposes stated, is received.

10 BY MR. EISEN:

11 Q Again with regard to the July 1, 1993, meeting,  
12 Mr. Rey, did anyone raise a question at that meeting about  
13 the meeting being improper in any way?

14 A No.

15 Q Did there come a time when you learned that  
16 questions had been raised concerning the propriety of that  
17 meeting?

18 A Yes.

19 Q Can you tell me when that was?

20 A Again, I believe it was August - September of  
21 1993. Press Broadcasting filed some allegations of  
22 impropriety regarding that meeting.

23 Q Did you discuss with Ms. Polivy those allegations?

24 A Yes.

25 Q Can you tell me what Ms. Polivy told you, if

1 anything?

2 A Well, she was extremely upset. She kept on  
3 referring to how the rules make it clear to her that it was  
4 not improper, Rule 120 something or other. I remember that  
5 sort of conversation with her.

6 Q We have stipulated, Stipulation No. 11, when the  
7 Supreme Court decision granting Rainbow Broadcasting  
8 Company's application became final.

9 Do you recall when that was?

10 A Yes.

11 Q Do you recall the date?

12 A I believe the date is August 30, 1990.

13 Q Before August 30, 1990, did Rainbow Broadcasting  
14 Company undertake any construction of its television  
15 station?

16 A Physical construction, no. From the period of  
17 right after the Supreme Court in June 20 something, 1990,  
18 and August 30th, we were involved in the preconstruction  
19 planning of the transmitter building. We also selected  
20 equipment. That sort of thing was done in that period of  
21 time.

22 Q Would you please turn to Rainbow Exhibit 7, page  
23 2?

24 A Yes.

25 Q Have you seen that letter before?

1 A Yes, I wrote the letter.

2 Q Did you sign the letter?

3 A Yes.

4 Q Who is Richard Edwards?

5 A Richard Edwards, I don't know his exact title at  
6 the time, but he was employed by Gannett Tower Company as an  
7 executive. I think it was vice president of the company in  
8 charge of their towers. They had a Miami tower and an  
9 Orlando tower.

10 Q Can you describe the reason that you sent this  
11 letter to Mr. Edwards?

12 A Well, again, we were planning construction of the  
13 building. Rick Edwards had sent me a letter in late '89, or  
14 January of '90 -- I don't recall the date -- in which he  
15 wanted -- he solicited specific information from Rainbow  
16 regarding dimensions of the transmitter room that we would  
17 have needed, and mounting information of the antenna on the  
18 tower.

19 I had sent them a letter in January 30th asking  
20 him for additional information in able for me to be able to  
21 provide him with the answer that he needed. I don't think  
22 he ever responded to that January 30th letter. And this  
23 letter was sent basically to -- oh, there was something  
24 else.

25 There was information regarding this -- Rick

1 Edwards or Gannett Tower Company was proposing a three  
2 transmitter room single construction. In other words, three  
3 rooms will be constructed all at once. One for future FM  
4 tenant, another one for a future TV tenant and one for  
5 Rainbow.

6 We had asked them for information regarding the  
7 construction -- the contractors' bids, as well as other  
8 information regarding tower brackets and azimuths and  
9 whatnot, and that information had not been forthcoming.  
10 This letter took a position that we were going to designate  
11 according to the provisions of the lease our own contractor  
12 and our own engineer architect in able for us to go ahead  
13 and build our transmitter room.

14 Q Just briefly, you mentioned a lease.

15 When was that lease entered into, to your  
16 recollection?

17 A The lease was negotiated towards the end of 1985,  
18 and I believe it's dated by signature January of 1986.

19 Q Would you take a look at Rainbow Exhibit 6,  
20 please, and tell me if that's the lease to which you are  
21 referring?

22 A It is.

23 Q In the August 10 -- I'm sorry.

24 Had you finished your answer?

25 A I lost my train of thought.

1           Q     Back to the August 10, 1990, letter, please, to  
2     Mr. Edwards, page 2 of Exhibit 7.

3           A     Um-hmm.

4           Q     In the first sentence of that letter you refer to  
5     a clear path to construct the facility.

6           A     Okay.

7           Q     What did you mean by the use of that phrase?

8           A     Well, that phrase is anticipatory on my part at  
9     this time. The reason for that is on the June 20 something,  
10    1990, U.S. Supreme Court decision the decision was Justice  
11    Brennan's decision. He retired, I believe, the very next  
12    day. A petition for reconsideration was filed by Metro,  
13    losing cross-applicant.

14                I had asked a number of attorneys that I knew the  
15    likelihood of the U.S. Supreme Court reversing itself in  
16    reconsideration. Nobody that I asked could tell me the last  
17    time that they knew or were aware that the Court had  
18    reversed itself in reconsideration.

19                One of them pointed out that he felt it was highly  
20    unlikely being that it was Justice Brennan's last decision  
21    that his colleagues will not reverse his last decision as  
22    well. I thought the petition for reconsideration was  
23    basically an exercise in futility on Metro's part. It was  
24    academic, but nevertheless it was still pending.

25                So this is anticipatory on my part.



1           Q     Was there a reason that you were not able to begin  
2 construction before August 30, 1990, the date of the Supreme  
3 Court decision became final?

4           A     Well, the deal with Mr. Howard Conant was a free  
5 and clear construction permit, so I could not draw on those  
6 funds until the permit was free and clear. So we were using  
7 the time to do a lot of preconstruction planning, but we  
8 could not construct with his loan dollars.

9           Q     When you say "preconstruction planning," what did  
10 that include?

11          A     Well, step one is the transmitter building. There  
12 is also once that is built you can actually start locating  
13 physical items in that room. There is also -- at the time  
14 we didn't know exactly how the tower was configured in terms  
15 of -- and I am stepping a little out of my arena, but  
16 whether holes for brackets were already preconstruction on  
17 the tower members high up, so you can mount the antenna and  
18 the sustaining wave guide, et cetera, spring and whatnot.  
19 There were a lot of -- those are the questions that I posed  
20 to Mr. Edwards in the January 30, 1990, letter.

21                But all of that is preconstruction planning.  
22 Selecting equipment, configuring conceptually how to set up  
23 the transmitter room in terms of layout of equipment;  
24 selecting equipment for the studio side of the operation  
25 layout. There is a lot of work to be done before you can